

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**AUBRA GROOM,**

**Petitioner,**

**v.**

**CASE NO. 2:18-CV-01531**

**CRIM. NO. 2:17-CR-00159**

**CHIEF JUDGE EDMUND A. SARGUS, JR.**

**Magistrate Judge Kimberly A. Jolson**

**UNITED STATES OF AMERICA,**

**Respondent.**

**OPINION AND ORDER**

On December 4, 2018, the Magistrate Judge issued a *Report and Recommendation* recommending that the *Motion to Vacate under 28 U.S.C. § 2255* (ECF No. 43) be dismissed. (ECF No. 44.) Petitioner has filed an *Objection* to the Magistrate Judge's *Report and Recommendation*. (ECF No. 47.) Pursuant to 28 U.S.C. § 636(b), this Court has conducted a *de novo* review.

Petitioner challenges his conviction pursuant to his guilty plea on possession of a firearm by a convicted felon. He asserts that he was denied the effective assistance of counsel because his attorney failed to challenge the two-point enhancement in his recommended Guideline sentence under U.S.S.G. § 3C1.2 for obstruction of justice in view of *Johnson v. United States*, -- U.S. --, --, 135 S.Ct. 2551 (2015). (ECF No. 43 at 4; *see also* PreSentence Investigation Report, ¶ 21, 22.) The Magistrate Judge recommended dismissal of this claim on the merits. Petitioner objects to that recommendation. Petitioner maintains that he would have received a reduced sentence without application of the two-point enhancement of his sentence under U.S.S.G. § 3C1.2, and contends that his attorney should have investigated the issue and objected. However, the record reflects no basis for a potentially meritorious objection to the enhancement of

Petitioner's sentence on this basis. Therefore, Petitioner cannot establish the denial of the effective assistance of counsel under the two-prong test of *Strickland v. Washington*, 466 U.S. 668 (1984). For these reasons, and for the reasons addressed in the Magistrate Judge's *Report and Recommendation*, Petitioner's *Objection* (ECF No. 47) is **OVERRULED**. The *Report and Recommendation* (ECF No. 44) is **ADOPTED** and **AFFIRMED**. The *Motion to Vacate under 28 U.S.C. § 2255* (ECF No. 43) is hereby **DISMISSED**.

Pursuant to Rule 11 of the Rules Governing Section 2255 Proceedings, the Court now considers whether to issue a certificate of appealability. "In contrast to an ordinary civil litigant, a state prisoner who seeks a writ of habeas corpus in federal court holds no automatic right to appeal from an adverse decision by a district court." *Jordan v. Fisher*, 135 S.Ct. 2647, 2650 (2015); 28 U.S.C. § 2253(c)(1) (requiring a habeas petitioner to obtain a certificate of appealability in order to appeal.)


When a claim has been denied on the merits, a certificate of appealability may issue only if the petitioner "has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). To make a substantial showing of the denial of a constitutional right, a petitioner must show "that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were 'adequate to deserve encouragement to proceed further.'" *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893, n. 4 (1983)). When a claim has been denied on procedural grounds, a certificate of appealability may issue if the petitioner establishes that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right, and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling. *Id.*

This Court is not persuaded that reasonable jurists would debate the dismissal of Petitioner's claim as without merit. Therefore, the Court **DECLINES** to issue a certificate of appealability.

The Court **CERTIFIES** pursuant that the appeal would not be in good faith, and that an application to proceed *in forma pauperis* on appeal should be **DENIED**.

The Clerk is **DIRECTED** to enter final **JUDGMENT**.

**IT IS SO ORDERED.**

 1-29-2019  
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**EDMUND A. SARGUS, JR.**  
**CHIEF UNITED STATES DISTRICT JUDGE**